

1  
2  
3  
4

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 ROLAND E. GARCIA, No. C-07-2279 EMC  
9 Plaintiff,

10 v. **ORDER GRANTING DEFENDANTS'**  
11 DAVID COLEMAN, *et al.*, **MOTION TO DISMISS**  
12 Defendants. **(Docket No. 8)**

Having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel, the Court hereby **GRANTS** Defendants' motion to dismiss but gives Plaintiff leave to amend.

18 In their motion to dismiss, Defendants argue that Plaintiff has failed to establish subject  
19 matter jurisdiction because he did not allege in his complaint that the copyright at issue was  
20 registered. Defendants further argue that Plaintiff has failed to state a claim for relief under the  
21 Copyright Act.

22 In response to the first argument, Plaintiff has submitted a copy of a certificate of  
23 registration. That certificate, however, reflects that the copyright is for a photograph, which is not  
24 entirely consistent with the complaint which suggests that the copyright is for a wine label design.  
25 See Compl. ¶ 38. In response to the second argument, Plaintiff correctly notes that “[c]opyright  
26 claims need not be pled with particularity.” *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 167 F. Supp.  
27 2d 1114, 1120 (C.D. Cal. 2001). However, a claim for copyright infringement must include at the  
28 very least an allegation of ownership of the copyright at issue, *see, Kelly v. Arriba Soft Corp.*, 336

**United States District Court**  
For the Northern District of California

1 F.3d 811, 817 (9th Cir. 2003), and Plaintiff failed to point to any specific allegation in the complaint  
2 that he owns the copyright at issue.

3 Accordingly, the Court grants Defendants' motion to dismiss but shall give Plaintiff leave to  
4 amend. The amended complaint should contain allegations that Plaintiff owns the copyright at issue  
5 and further that Plaintiff has registered the copyright. *See Perfect 10*, 167 F. Supp. 2d at 1120  
6 ("[C]omplaints simply alleging present ownership by plaintiff, registration in compliance with the  
7 applicable statute and infringement by defendant have been held sufficient under the rules."). The  
8 complaint shall describe with specificity the precise copyrighted works at issue. The amended  
9 complaint shall be filed by October 26, 2007.

10

11

IT IS SO ORDERED.

12

13

Dated: October 12, 2007

14

15

  
EDWARD M. CHEN  
United States Magistrate Judge

16

17

18

19

20

21

22

23

24

25

26

27

28